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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,685

05/19/2005

Georg Rudiger Kotzian

70176

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26748

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03/14/2008

SYNGENTA CROP PROTECTION, INC.  
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EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

03/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,685	<b>Applicant(s)</b> KOTZIAN, GEORG RUDIGER	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1, 3 and 4 are pending. Claim 2 has been cancelled.

#### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. (WO 00/05956) in view of Davies et al. (Review Herbicide Safeners a review, 1999).

#### **Applicant's Invention**

Applicant claims a composition comprising a mixture of metamifop and a synergistically effective amount of S-metolachlor.

#### **Determination of the scope and the content of the prior art**

##### **(MPEP 2141.01)**

Kim et al. teaches the compound metamifop (component (a)) (formula (1), wherein  $R=CH_3$ ,  $X=H$  and  $Y=H$  (Table 1, first listing, page 5). The herbicide can be used alone or in combination with other herbicides, insecticides or bactericides (page 21, lines 18-20).

**Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)**

Kim et al. does not teach S-metolachlor. It is for this reason that Davies et al. is joined. Davies et al. teaches metolachlor as an herbicide.

**Finding of prima facie obviousness  
Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kim et al. and Davies et al. to further include the combination of metamifop and S-metolachlor. It would be prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose in view of In re Kerkhoven 205 USPQ 1069 (C.C.P.A 1980). Thus, combining two herbicides to form an herbicidal composition is prima facie obvious.

Claim 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. (WO 00/05956) in view of Hudetz et al. (US 5,981,432).

**Applicant's Invention**

Applicant claims a method of controlling undesired plant growth in crops of useful plants, comprising the application of a herbicidally effective amount of a composition to a crop plant or locus thereof, wherein the composition includes metamifop and a synergistically effective amount of S-metolachlor. Preferably the crop plant is rice.

**Determination of the scope and the content of the prior art**  
**(MPEP 2141.01)**

Kim et al. discloses a method of using the compound metamifop, in combination with other herbicides, to control barnyard grass produced from rice (page 1, lines 6-19).

**Ascertainment of the difference between the prior art and the claims**  
**(MPEP 2141.02)**

Kim et al. does not teach the combination of metamifop with S-metolachlor in a method for controlling undesired plant growth. It is for this reason that Hudetz et al. is joined. Hudetz et al. teaches herbicidal compositions comprising S-metolachlor suitable for selectively controlling weeds in crops of useful plants, including rice (column 1, lines 8-17).

**Finding of prima facie obviousness**  
**Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kim et al. and Hudetz et al. to further include a method of using metamifop in combination with S-metolachlor to treat undesired plant growth on rice. One would have been motivated to combine two compositions with herbicidal activity into one method since they are both known to be used to protect rice from undesired plant growth in order with a reasonable expectation of success.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schaetzer et al. (WO 03/009686).

.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571)270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Danielle Sullivan/  
Examiner, Art Unit 1616

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/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616